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DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED-2019-OSERS-0134]

Proposed Priority and Requirements--Technical Assistance on State Data Collection--National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B and Part C Fiscal Data

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priority and requirements.

SUMMARY: The mission of the Office of Special Education and Rehabilitative Services (OSERS) is to improve early childhood, educational, and employment outcomes and raise expectations for all people with disabilities, their families, their communities, and the Nation. As such, the Department of Education (Department) proposes a funding priority and requirements under the Technical Assistance on State Data Collection program. The Department may use the proposed priority for competitions in fiscal year (FY) 2020 and later years. We take this action to focus attention on an identified national need to provide technical assistance (TA) to improve the capacity of States to meet the data

collection requirements under Parts B and C of the Individuals with Disabilities Education Act (IDEA). The National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B and Part C Fiscal Data (Fiscal Data Center) would support States in collecting, reporting, and determining how to best analyze and use their IDEA Part B and C fiscal data to establish and meet high expectations for each child with a disability and would customize its TA to meet each State's specific needs.

DATES: We must receive your comments on or before [INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting

comments, and viewing the docket, is available on the site under "Help."

- Postal Mail, Commercial Delivery, or Hand Delivery:

If you mail or deliver your comments, address them to Charles Kniseley, U.S. Department of Education, 400 Maryland Avenue, SW, room 5133, Potomac Center Plaza, Washington, DC 20202-5076.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Charles Kniseley, U.S. Department of Education, 400 Maryland Avenue, SW, room 5133, Potomac Center Plaza, Washington, DC 20202-5076. Telephone: (202) 245-7322. Email: Charles.Kniseley@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

[Catalog of Federal Domestic Assistance (CFDA) Number: 84.373F.]

Invitation to Comment: We invite you to submit comments regarding the proposed priority and requirements. To ensure that your comments have maximum effect in developing the notice of final priority and requirements we urge you to clearly identify the specific topic that each comment addresses.

We are particularly interested in comments about whether the proposed priority or any of the proposed requirements would be challenging for new applicants to meet and, if so, how the proposed priority or requirements could be revised to address potential challenges.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from this proposed priority and these proposed requirements. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priority and requirements by accessing Regulations.gov. You may also inspect the comments in person in room 5133, 550 12th Street, SW, Potomac Center Plaza, Washington, DC, between

the hours of 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priority and requirements. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Program: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary the authority to reserve not more than one-half of 1 percent of the amounts appropriated under Part B for each fiscal year to provide TA activities authorized under section 616(i), where needed, to improve the capacity of States to meet the data collection requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is \$25,000,000, cumulatively adjusted by the rate of

inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for the implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA (from funds reserved under section 611(c)(1)), where needed, to improve the capacity of States to meet the data collection requirements under Parts B and C of IDEA, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. Additionally, the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 gives the Secretary the authority to use funds reserved under section 611(c) to "administer and carry out other services and activities to improve data collection, coordination, quality, and use under parts B and C of the IDEA." Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019; Div. B, Title III of P.L. 115-245; 132 Stat. 3100 (2018).

To help ensure this program meets State needs, we invited the public to provide input on the Technical Assistance on State Data Collection program from April 24,

2018, through May 24, 2018, on the ED.gov OSERS Blog.¹ In response to this invitation, we received 63 relevant responses, all of which we considered in our development of this document. Sixty-two supported our continuing to fund TA centers; only one supported one of the other options we presented, specifically, to invite State educational agencies (SEAs) and State lead agencies (LAs) to directly apply for funds reserved under section 611(c) to purchase TA to improve their capacity to meet their IDEA Part B and Part C data collection requirements. A few commenters noted some concerns regarding overlap between TA centers and a need for cross-State collaboration TA opportunities.

We address these concerns in the proposed priority by (1) including a requirement for the Fiscal Data Center to offer cross-State collaboration TA opportunities; and (2) clarifying that the scope of the Fiscal Data Center will be distinct from the scope of two separate centers that will provide TA on other non-fiscal data: the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data, CFDA number 84.373Y, and the National Technical Assistance Center to Improve State Capacity to Collect,

¹ See <https://sites.ed.gov/osers/2018/04/use-of-part-b-program-funds-for-technical-assistance-to-states-on-idea-data-collection/>.

Report, Analyze, and Use Accurate Early Childhood IDEA Data, CFDA number 84.373Z, for which the notices of final priority and requirements (NFP) were published in the *Federal Register* on August 12, 2019 (84 FR 39736 and 84 FR 39727).

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), and 1442; the Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019; Div. B, Title III of P. L. 115-245, Consolidated Appropriations Act, 2019; 132 Stat. 3100 (2018).

Applicable Program Regulations: 34 CFR 300.702.

PROPOSED PRIORITY:

The Assistant Secretary proposes the following priority for this program. We may apply this proposed priority in any year in which this program is in effect.

National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B and Part C Fiscal Data.

Background:

The purpose of this proposed priority is to establish a Fiscal Data Center to provide States with TA to assist them in meeting their fiscal data collection and reporting obligations under IDEA. Under Part B of IDEA, State

educational agencies (SEAs) are required to submit fiscal data to the Department in (1) the IDEA Part B local educational agency (LEA) Maintenance of Effort (MOE) Reduction and Coordinated Early Intervening Services (CEIS) (LEA MOE/CEIS) Data Collection; and (2) Section V of the IDEA Part B Annual Application. Under IDEA Part C, State lead agencies (LAs) are also required to report fiscal data to the Department in (1) Section III of the IDEA Part C Annual Application (use of funds); and (2) Section IV of the IDEA Part C Annual Application (indirect costs).

In reviewing the data submitted by States, the Department finds that States continue to need support to build their capacity to submit valid and reliable IDEA Part B and Part C fiscal data. It is important for these data to be accurate so that States can use them to more effectively manage all available funding resources for services for children with disabilities and ensure that IDEA funds are used as a payor of last resort. In addition, under IDEA Part B, States may suffer significant monetary consequences as a result of inaccurate data reporting or noncompliance identified through these data collections.

Data under IDEA Part B

In FY 2014 the Department funded the Technical Assistance on State Data Collection--IDEA Fiscal Data Center, which provided TA to improve the capacity of States to meet the following IDEA Part B fiscal data collection requirements under section 618 of IDEA: (1) Maintenance of State Financial Support (MFS) for special education and related services; and (2) LEA MOE/CEIS.

Since that time, the Department added new data elements to the LEA MOE/CEIS data collection based on the final LEA MOE regulations that were published in the *Federal Register* on April 28, 2015 (80 FR 23644), and States will need to ensure that the data they submit under those new elements are valid and reliable. In addition, the Department continues to identify errors in States' Part B LEA MOE/CEIS data submissions through its annual review process. Finally, based on the Office of Special Education Programs' (OSEP) monitoring visits and subsequent fiscal findings in several States, OSEP has determined that States continue to need support in understanding the requirements relating to the data elements reported under the LEA MOE/CEIS data collection.

For example, OSEP has identified noncompliance in the methodologies used by some States to calculate the amounts of their LEAs' IDEA Part B subgrants. This type of

noncompliance has broader implications for LEAs and States that receive increased or decreased funding for special education and related services. As an illustration of the potential impact of fiscal noncompliance, an error in calculating the amount of an LEA's IDEA Part B allocation affects the amounts the LEA may expend to meet other fiscal requirements, such as LEA MOE reduction under 34 CFR 300.205, voluntary CEIS under 34 CFR 300.226(a), comprehensive CEIS under 34 CFR 300.646(d), and proportionate share for parentally placed private school children with disabilities under 34 CFR 300.133. Based on the complexities and high stakes involved in reporting valid and reliable IDEA Part B fiscal data, the Department determined that States continue to need TA to improve their data collection capacity, their ability to analyze and use that data, and their ability to ensure data are accurate and can be reported to the Department and the public.²

Accurately collecting and reporting valid and reliable IDEA Part B fiscal data is critically important for States and LEAs. Failure of a State to report accurate data on MFS may result in a reduction of IDEA Part B section 611 funds. Failure of an LEA to meet LEA MOE may result in

² The Department's FY 2014 notice of proposed priority (79 FR 24661) provided information on the challenges States face in understanding, submitting, analyzing and using IDEA Part B fiscal data.

repayment by the SEA of non-Federal funds to the Department. In addition, accurate fiscal information is needed for States to make informed decisions on the use of their IDEA Part B funds. Finally, valid and reliable fiscal data allow OSEP to better protect the Federal interest in the approximately \$13.2 billion of IDEA Part B grants made available to States by the Department in Federal fiscal year (FFY) 2019 by ensuring that States and LEAs meet their obligation to collect and report accurate data on IDEA's MFS and LEA MOE requirements.

TA on collecting, reporting, analyzing, and using other IDEA Part B and Part C data reported under sections 616 and 618 of IDEA would be provided by the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data, CFDA number 84.373Y, and the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate Early Childhood IDEA Data, CFDA number 84.373Z, for which notices of final priority and requirements (NFP) were published in the *Federal Register* on August 12, 2019 (84 FR 39736 and 84 FR 39727).

Data under IDEA Part C

In its review of State submissions of IDEA Part C fiscal data, the Department found that States need support to submit accurate, valid, and reliable data in two areas: (1) use of IDEA Part C funds; and (2) indirect costs.³ In its reviews, OSEP found inconsistencies within the fiscal data reported by a State LA and between the fiscal data reported and the related fiscal certification and assurances that the State must provide in its IDEA Part C Annual Application.

In its IDEA Part C Annual Application, each LA must provide several fiscal-related assurances and a fiscal-related certification. Specifically, each LA must-- (1) ensure its statewide system has a single line of responsibility, including: (a) the identification and coordination of all available resources for early intervention services within the State, including those from Federal, State, local, and private sources, consistent with subpart F of 34 CFR part 303; and (b) the assignment of financial responsibility in accordance with subpart F of 34 CFR part 303 and specifically ensure IDEA Part C funds

³ These fiscal data are reported in the following sections of the IDEA Part C Application: (1) Section III: Use of Federal IDEA Part C Funds for the State LA and the Interagency Coordinating Council (ICC); and (2) Section IV.B: Restricted Indirect Cost Rate/Cost Allocation Plan data, which the Department collects, *inter alia*, under section 618(a)(3) of IDEA.

are used as payor of last resort (including any method under IDEA section 640); (2) coordinate all available funding sources for IDEA Part C services (including its system of payments); (3) use IDEA Part C funds to supplement, not supplant, the level of State and local funds expended for infants and toddlers with disabilities; and (4) charge administrative direct and indirect costs to the Part C grant consistent with applicable Federal fiscal requirements.⁴

In addition, each LA must certify that the arrangements to establish financial responsibility for the provision of Part C services among appropriate public agencies under 34 CFR 303.511 and the lead agency's contracts with early intervention service (EIS) providers regarding financial responsibility for the provision of Part C services meet the requirements in 34 CFR 303.500 through 303.521 and are current as of the date of submission of the certification.⁵ Fiscal data related to this certification may need to also be reported in Section

⁴ These assurances are provided in Section II.B., items 13 and 24. The assurance numbers are from the FFY 2019 IDEA Part C Annual State Application, which can be accessed at <https://osep.grads360.org/#communities/pdc/documents/17654>.

⁵ This is certification number 3 in Section II.C. of the application, and it is provided, under IDEA section 640 and 34 CFR 303.202, in Section II.C. It can be accessed at <https://osep.grads360.org/#communities/pdc/documents/17654>.

III of the IDEA Part C Annual State Application under funding for other State agencies to the extent Federal IDEA Part C funds are used in conjunction with State funding or other support provided by State agencies other than the State lead agency.

In several instances, States' reporting of IDEA Part C fiscal data in their applications indicates that there is confusion related to the implementation of underlying Part C fiscal requirements. Many States need support in understanding the administrative costs that may be charged to IDEA Part C grants as direct and indirect costs. Additionally, in their annual application numerous States are unable to identify or disaggregate the costs for direct services, as well as costs attributable to other State agencies, due to confusion regarding the fiscal certification, and fiscal assurances regarding the payor of last resort, system of payments, methods, and related fiscal coordination requirements.

OSEP's review of the fiscal data in Section III of the IDEA Part C application (use of funds) indicates that States need TA in this area. This review has identified inconsistencies in data across categories of expenses (including direct and indirect costs) and between the fiscal data reported by the State and the related fiscal

assurances and certification regarding funding needed or provided by other State agencies (and any methods, such as interagency agreements or other appropriate written mechanisms) and the State's related application requirements, including its system of payments policies. States' fiscal data reflect confusion with the fiscal requirements not only under the IDEA Part C statute and regulations, but also the fiscal requirements under the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, codified in 2 CFR part 200 (OMB Uniform Guidance).

Specifically, OSEP has identified issues with, and States have raised questions about, how to report IDEA Part C fiscal data regarding the amount of IDEA Part C funds to be used for: (1) administrative costs, such as positions partially or wholly funded by IDEA Part C funds, and the amount of fringe benefits (reported in Section III.A.); (2) maintenance and implementation activities for the LA and the State Interagency Coordinating Council (ICC) (including any costs that require prior approval by OSEP, such as equipment, rent, and participant support costs for trainings and conferences) (reported in Section III.B.); (3) direct services (disaggregated by the type of service

and expended consistently with IDEA's payor-of-last-resort and system of payments requirements) (reported in Section III.C.); and (4) activities by other State agencies (reported in Section III.D.). The fiscal data in each of these categories reflects a need for TA on the requirements in the OMB Uniform Guidance as they apply to IDEA Part C LAs and EIS providers.

OSEP has also found that States need TA with Section III use of funds grant amendment requests after the grant is issued to comply with fiscal requirements and in order to expend unused IDEA Part C funds prior to those funds lapsing. These fiscal requirements are also codified in the OMB Uniform Guidance.

In Section IV.B. of the IDEA Part C application, the LA must report on whether the State plans to charge indirect costs to the IDEA Part C grant through the use of a restricted indirect cost rate agreement or a cost allocation plan that is approved by the LA's Federal cognizant agency and provide appropriate documentation.

Sections III.F.6 and IV.B also require States to indicate that, if indirect costs are being charged to the IDEA Part C grant, the State must indicate the total amount of the overall Federal IDEA Part C grant funds that will be charged for restricted indirect costs and provide

appropriate approval documentation. If the State charges indirect costs to its IDEA Part C grant, then, under 34 CFR 303.225(c), an LA may charge them through either: (1) a restricted indirect cost rate agreement that meets the requirements in 34 CFR 76.560 through 76.569; or (2) a cost allocation plan that meets the non-supplanting requirements in 34 CFR 303.225(b) and 34 CFR part 76.⁶ OSEP has worked with LAs when it identifies large amounts of IDEA Part C funding being reserved for administrative or indirect costs and believes that LAs need TA both on reporting indirect cost data to the Department in the application and on applying indirect costs and related Federal requirements to the IDEA Part C grant. This is particularly relevant to LAs that have a cognizant Federal agency other than the Department and to ensure that States and LAs meet requirements in Education Department General Administrative Regulations and the OMB Uniform Guidance, which require

⁶ Approximately three quarters of States have a department of health or social services as the LA for Part C. In those cases, the U.S. Department of Health and Human Services is the cognizant Federal agency for indirect cost purposes. For certain territories, the U.S. Department of the Interior is the cognizant Federal agency for indirect cost purposes. For LAs that are also SEAs, the Department is the cognizant agency for approving the LA's restricted indirect cost rate or cost allocation plan. If an LA has a cognizant Federal agency other than the Department for determining the LA's restricted indirect cost rate or approving its cost allocation plan, the LA must attach a copy of the approved restricted indirect cost rate agreement or cost allocation plan to the Department in the IDEA Part C Annual Application.

indirect costs for IDEA Part C grants to be calculated on a restricted basis due to IDEA Part C's nonsupplanting requirement.⁷ The Fiscal Data Center would support States in appropriately applying their previously negotiated or provisionally approved indirect cost rate agreements or a cost allocation plan as described above. The Fiscal Data Center would not support LAs in negotiating an indirect cost rate agreement with their cognizant agencies.

States need TA in reporting valid and reliable IDEA Part C fiscal data, understanding the underlying requirements in Section III and Section IV of the IDEA Part C Annual State Application, and optimally using and analyzing the data submitted to the Department.

Indirect Costs Charged by the Fiscal Data Center to the Grant

In addition, we propose for this priority to include an indirect cost cap that is the lesser of the grantee's actual indirect costs as determined by the grantee's negotiated indirect cost rate agreement with its cognizant Federal agency and 40 percent of the grantee's modified total direct cost (MTDC) base. We believe this cap is appropriate as it maximizes the availability of funds for

⁷ Appendix VI and Appendix VII to 2 CFR 200.

the primary TA purposes of this priority. The Department has done an analysis of the indirect cost rates for all current TA centers funded under the Technical Assistance and Dissemination and Technical Assistance on State Data Collection programs as well as other grantees that are large, midsize, and small businesses and small nonprofit organizations and has found that, in general, total indirect costs charged on these grants by these entities were at or below 35 percent of total direct costs (TDC). We recognize that, dependent on the structure of the investment and activities, the MTDC base could be much smaller than the TDC, which would imply a higher indirect cost rate than those calculated here. The Department arrived at a 40 percent rate to address some of that variation. This would account for a 12 percent variance between TDC and MTDC. However, we note that, in the absence of a cap, certain entities would likely charge indirect cost rates in excess of 40 percent of MTDC. Based on our analysis, it appears that those entities would likely be larger for-profit and nonprofit organizations, but these organizations appear to be outliers when compared to the majority of other large businesses as well as the entirety of OSEP's grantees. Setting an indirect cost rate cap of 40 percent would be in line with the majority of

applicants' existing negotiated rates with the cognizant Federal agency.

This proposed priority aligns with two priorities from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the *Federal Register* on March 2, 2018 (83 FR 9096):

Priority 2: Promoting Innovation and Efficiency, Streamlining Education With an Increased Focus on Student Outcomes, and Providing Increased Value to Students and Taxpayers; and Priority 5: Meeting the Unique Needs of Students and Children with Disabilities and/or Those With Unique Gifts and Talents.

The Fiscal Data Center must be operated in a manner consistently with nondiscrimination requirements contained in the U.S. Constitution and the Federal civil rights laws. Proposed Priority:

The purpose of this proposed priority is to fund a cooperative agreement to establish and operate the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B and Part C Fiscal Data (Fiscal Data Center).

The Fiscal Data Center will provide TA to improve the capacity of States to meet the IDEA Part B and C fiscal data collection requirements under IDEA section 618 and

increase States' knowledge of the underlying IDEA fiscal requirements and calculations necessary to submit valid and reliable data for the following collections: (1) MFS in Section V of the IDEA Part B Annual State Application; (2) LEA MOE/CEIS; (3) Description of Use of Federal IDEA Part C Funds for the LA and the ICC in Section III of the IDEA Part C Annual State Application; and (4) Restricted Indirect Cost Rate/Cost Allocation Plan Information in Sections III and IV of the IDEA Part C Annual State Application. States will also receive TA from the Fiscal Data Center on the underlying fiscal requirements of IDEA related to these collections and how they impact the States' ability to meet IDEA fiscal data collection requirements.

Note: The Fiscal Data Center may neither provide TA to States on negotiating indirect cost rate agreements with their cognizant Federal agencies nor act as an agent or representative of States in such negotiations.

The Fiscal Data Center must be designed to achieve, at a minimum, the following outcomes:

(a) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part B and Part C fiscal data;

(b) Increased State knowledge of underlying statutory and regulatory fiscal requirements and the calculations necessary to submit valid and reliable fiscal data under IDEA Part B and Part C;

(c) Improved fiscal infrastructure (e.g., sample interagency agreements, standard operating procedures and templates) by coordinating and promoting communication and effective fiscal data collection and reporting strategies among relevant State offices, including SEAs, other State agencies, LEAs, schools, LAs, and early intervention service (EIS) programs or providers;

(d) Increased capacity of States to submit accurate and timely fiscal data to enhance current State validation procedures to prevent errors in State-reported IDEA data;

(e) Increased capacity of States to train personnel to meet the IDEA fiscal data collection and reporting requirements under section 618 of IDEA through development of effective tools and resources (e.g., templates, tools, calculators, and documentation of State data processes); and providing opportunities for in-person and virtual cross-State collaboration about IDEA fiscal data collection and reporting requirements (required under section 618 of IDEA);

(f) Improved capacity of SEAs, LEAs, LAs, and EIS programs or providers to collect and use IDEA fiscal data to identify issues and address those issues through monitoring, TA, and stakeholder involvement; and

(g) Improved IDEA fiscal data validation using results from data reviews conducted by the Department to work with States and generate tools that can be used by States to accurately communicate fiscal data to local consumers (e.g., parents, LEAs, EIS programs or providers, the general public) and lead to improvements in the validity and reliability of fiscal data required by IDEA.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the *Federal Register*. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34

CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

PROPOSED REQUIREMENTS:

The Assistant Secretary proposes the following requirements for this program. We may apply one or more of these proposed requirements in any year in which this program is in effect.

Applicants must--

(a) Describe, in the narrative section of the application under "Significance," how the proposed project will--

(1) Use knowledge of how SEAs, LAs, LEAs, and EIS programs and providers are meeting IDEA Part B and Part C fiscal data collection and reporting requirements and the underlying statutory and regulatory fiscal requirements, as well as knowledge of State and local data collection systems, as appropriate;

(2) Examine applicable national, State, and local data to determine the current capacity needs of SEAs, LAs, LEAs, and EIS programs and providers to meet IDEA Part B and Part C fiscal data collection and reporting requirements;

(3) Train SEAs and LAs on how to use IDEA section 618 fiscal data as a means of both improving data quality and identifying programmatic strengths and areas for improvement; and

(4) Disseminate information regarding how SEAs and LAs are currently meeting IDEA fiscal data collection and reporting requirements and are using IDEA section 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement.

(b) Demonstrate, in the narrative section of the application under "Quality of project services," how the proposed project will--

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will--

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that services and products meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide--

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework.

Include a copy of the conceptual framework in Appendix A;

Note: The following websites provide more information on logic models and conceptual frameworks:

www.osepideasthatwork.org/logicModel and

www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.

(4) Be based on current research and make use of evidence-based practices (EBPs).⁸ To meet this requirement, the applicant must describe--

(i) The current research on fiscal data management and data system integration, and related EBPs; and

(ii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe--

(i) How it proposes to identify or develop the knowledge base on fiscal data management and data system integration and the underlying fiscal requirements of IDEA;

(ii) Its proposed approach to universal, general TA,⁹ which must identify the intended recipients, including the

⁸ For the purposes of this priority, "evidence-based" means the proposed project component is supported, at a minimum, by evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

⁹ "Universal, general TA" means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff

type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,¹⁰ which must identify--

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the State and local levels; and

(C) The process by which the proposed project will collaborate with OSEP-funded centers and other federally funded TA centers to develop and implement a coordinated TA plan when such other centers are involved in a State; and

(iv) Its proposed approach to intensive, sustained TA,¹¹ which must identify--

with recipients, either by telephone or email, are also considered universal, general TA.

¹⁰ "Targeted, specialized TA" means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to addressing States' challenges reporting high-quality IDEA fiscal data to the Department and the public, which should, at a minimum, include providing on-site consultants to the SEA or LA to--

(1) Assess all 57 IDEA Part C programs to determine LA organizational structure and their capacity to submit valid and reliable IDEA Part C fiscal data;

(2) Assess all 60 entities that receive IDEA Part B grants to determine their capacity to submit valid and reliable IDEA Part B fiscal data;

(3) Identify and document model practices for data management and data system integration policies, procedures, processes, and activities within the State;

(4) Develop and adapt tools and provide technical solutions to meet State-specific data needs; and

¹¹ "Intensive, sustained TA" means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. "TA services" are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

(5) Develop a sustainability plan for the State to continue the data management and data system integration work in the future;

(C) Its proposed approach to measure the readiness of SEAs and LAs to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the State and local levels;

(D) Its proposed plan to prioritize States with the greatest need for intensive TA to receive products and services;

(E) Its proposed plan for assisting SEAs and LAs to build or enhance training systems that include professional development based on adult learning principles and coaching;

(F) Its proposed plan for working with appropriate levels of the education system (e.g., SEAs, regional TA providers, districts, local programs, families) to ensure that there is communication between each level and that there are systems in place to support the collection, reporting, analysis, and use of high-quality IDEA fiscal data as well as fiscal data management and data system integration; and

(G) The process by which the proposed project will collaborate with OSEP-funded centers and other federally funded TA centers to develop and implement a coordinated TA plan when they are involved in a State;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe--

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under "Quality of the project evaluation," include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.¹² The evaluation plan must--

(1) Articulate formative and summative evaluation questions, including important process and outcome

¹² A "third-party" evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b) (2) (ii) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the Annual Performance Report (APR); and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under "Adequacy of resources," how--

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities;

(4) The proposed costs are reasonable in relation to the anticipated results and benefits, and funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes; and

(5) The applicant will ensure that it will recover the lesser of: (i) its actual indirect costs as determined by the grantee's negotiated indirect cost rate agreement with its cognizant Federal agency; and (ii) 40 percent of its modified total direct cost (MTDC) base as defined in 2 CFR 200.68.

Note: The MTDC is different from the total amount of the grant. Additionally, the MTDC is not the same as calculating a percentage of each or a specific expenditure category. If the grantee is billing based on the MTDC base, the grantee must make its MTDC documentation available to the program office and the Department's Indirect Cost Unit. If a grantee's allocable indirect costs exceed 40 percent of its MTDC as defined in 2 CFR 200.68, the grantee may not recoup the excess by shifting the cost to other grants or contracts with the U.S. Government, unless specifically authorized by legislation. The grantee must use non-Federal revenue sources to pay for such unrecovered costs.

(e) Demonstrate, in the narrative section of the application under "Quality of the management plan," how--

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe--

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements:

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project

officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' conference in Washington, DC, during each year of the project period; and

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during

the transition to this new award period and at the end of this award period, as appropriate; and

(6) Budget at least 50 percent of the grant award for providing intensive, sustained TA.

Final Priority and Requirements:

We will announce the final priority and requirements in a document in the *Federal Register*. We will determine the final priority and requirements after considering public comments and other information available to the Department. This document does not preclude us from proposing additional priorities or requirements, subject to meeting applicable rulemaking requirements.

Note: This document does not solicit applications. In any year in which we choose to use this proposed priority and one or more of these proposed requirements, we invite applications through a notice in the *Federal Register*.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, OMB determines whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

OMB has determined that this proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a new

rule must be fully offset by the elimination of existing costs through deregulatory actions. Because the proposed regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing the proposed priority and requirements only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

In addition, we have considered the potential benefits of this regulatory action and have noted these benefits in the background section of this document.

Paperwork Reduction Act of 1995

The proposed priority and requirements contain information collection requirements that are approved by OMB under OMB control number 1894-0006; the proposed priority and requirements do not affect the currently approved data collection.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration

Size Standards define "small entities" as for-profit or nonprofit institutions with total annual revenue below \$7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this proposed regulatory action would affect are SEAs; LEAs, including charter schools that operate as LEAs under State law; institutions of higher education; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on an applicant by the proposed priority and requirements would be limited to paperwork burden related to preparing an application and that the benefits of this proposed priority and these proposed requirements would outweigh any costs incurred by the applicant.

Participation in the Technical Assistance on State Data Collection program is voluntary. For this reason, the proposed priority and requirements would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance on State Data Collection program

funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving a Technical Assistance on State Data Collection program grant. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the proposed priority and requirements would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from small eligible entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part

79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the *Federal Register*, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the *Federal Register* by using the article

search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schultz,
*Delegated the authority to perform
the functions and duties of the
Assistant Secretary for the
Office of Special Education and
Rehabilitative Services.*

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